IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.235 OF 2005.

Sou Pyaranbi Yusuf Naik : Appellant.

versus

Shri Abdulrashid Abbas Mulla

& ors. : Respondents.

Mr.Amit B. Borkar for the appellant.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 08th September 2005.

ORAL ORDER

1. Heard advocate for the appellant. Nobody is present for the respondents. Appellant is original plaintiff. Her suit for partition was dismissed by the trial Court. There were two schedules of properties i.e. A and B. The trial

Court dismissed the suit in its entirety in respect of both the schedules. The plaintiff preferred an appeal . The appeal was partly allowed. The claim of the plaintiff regarding property in Schedule A was accepted by the appellate Court. There is no cross appeal by the respondents. But the claim of the plaintiff over the property in respect of Schedule B was rejected by the appellate Court and, therefore, this Second Appeal.

2. Counsel for the appellant tried to contend that it is a fact that the respondents had relied upon the surrender deed dated 17.5.1994 executed by the present appellant in their favour. Though the appellant disputes the genuineness of this document on the ground that it is a forged document, the fact remains that it is a registered document and findings of both the courts below are against the present appellant regarding this documents.

. Now it is tried to be contended by the counsel for the appellant that the surrender deed is without consideration and secondly when the father died on 7.8.92 the plaintiff become

entitled to the share in the property of the father and if the surrender deed is executed without reference to the said share, then the appellate court was not justified in rejecting the claim of the plaintiff.

3. Advocate for the appellant tendered xerox copy of the surrender deed dated 17.5.1994 executed by all the five sisters in favour of their brothers.

. There is specific mention of the death of their father on 7.8.92. All sisters including the plaintiff have acknowledged and admitted that the brothers were looking after the sisters well and properly after the death of their father and whatever share they had received in the property under the Muslim law and that too after the death of father is relinquished by them or surrendered by them in favour of the brothers. Other sisters did not dispute the genuineness of this document. This makes a case of the plaintiff totally unpalatable and secondly, the plaintiff did not seek any declaration in respect of this document in the civil suit. The document is a registered one and in these circumstances, the plaintiff was

bound by the document. The appellate court was fully justified in rejecting the claim of the plaintiff regarding property mentioned in schedule B. There is no merit in this case. No substantial question of law is involved. Hence the appeal is dismissed.

[D.G.DESHPANDE,J]